

111TH CONGRESS
1ST SESSION

S. 1937

To amend the Internal Revenue Code of 1986 to allow a 5-year carryback of operating losses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 27, 2009

Mr. BROWNBACK introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to allow a 5-year carryback of operating losses, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. 5-YEAR CARRYBACK OF OPERATING LOSSES.**

4 (a) IN GENERAL.—Subparagraph (H) of section
5 172(b)(1) of the Internal Revenue Code of 1986 is amend-
6 ed to read as follows:

7 “(H) CARRYBACK FOR 2008 AND 2009 NET
8 OPERATING LOSSES.—

9 “(i) IN GENERAL.—In the case of an
10 applicable 2008 or 2009 net operating loss

1 with respect to which the taxpayer has
2 elected the application of this subpara-
3 graph—

4 “(I) subparagraph (A)(i) shall be
5 applied by substituting any whole
6 number elected by the taxpayer which
7 is more than 2 and less than 6 for ‘2’,

8 “(II) subparagraph (E)(ii) shall
9 be applied by substituting the whole
10 number which is one less than the
11 whole number substituted under sub-
12 clause (I) for ‘2’, and

13 “(III) subparagraph (F) shall not
14 apply.

15 “(ii) APPLICABLE 2008 OR 2009 NET
16 OPERATING LOSS.—For purposes of this
17 subparagraph, the term ‘applicable 2008
18 or 2009 net operating loss’ means—

19 “(I) the taxpayer’s net operating
20 loss for any taxable year ending in
21 2008 or 2009, or

22 “(II) if the taxpayer elects to
23 have this subclause apply in lieu of
24 subclause (I), the taxpayer’s net oper-

ating loss for any taxable year beginning in 2008 or 2009.

“(iii) ELECTION.—Any election under this subparagraph shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extension of time) for filing the taxpayer’s return for the taxable year of the net operating loss. Any such election, once made, shall be irrevocable.

“(iv) COORDINATION WITH ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—In the case of a taxpayer who elects to have clause (ii)(II) apply, section 56(d)(1)(A)(ii) shall be applied by substituting ‘ending during 2001 or 2002 or beginning during 2008 or 2009’ for ‘ending during 2001, 2002, 2008, or 2009’.”.

(b) ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—Subclause (I) of section 56(d)(1)(A)(ii) is amended to read as follows:

“(I) the amount of such deduction attributable to the sum of carrybacks of net operating losses from taxable years ending during

1 2001, 2002, 2008, or 2009 and
 2 carryovers of net operating losses to
 3 such taxable years, or”.

4 (c) LOSS FROM OPERATIONS OF LIFE INSURANCE
 5 COMPANIES.—Subsection (b) of section 810 is amended
 6 by adding at the end the following new paragraph:

7 “(4) CARRYBACK FOR 2008 AND 2009 LOSSES.—

8 “(A) IN GENERAL.—In the case of an ap-
 9 plicable 2008 or 2009 loss from operations with
 10 respect to which the taxpayer has elected the
 11 application of this paragraph, paragraph (1)(A)
 12 shall be applied, at the election of the taxpayer,
 13 by substituting ‘5’ or ‘4’ for ‘3’.

14 “(B) APPLICABLE 2008 OR 2009 LOSS FROM
 15 OPERATIONS.—For purposes of this paragraph,
 16 the term ‘applicable 2008 or 2009 loss from op-
 17 erations’ means—

18 “(i) the taxpayer’s loss from oper-
 19 ations for any taxable year ending in 2008
 20 or 2009, or

21 “(ii) if the taxpayer elects to have this
 22 clause apply in lieu of clause (i), the tax-
 23 payer’s loss from operations for any tax-
 24 able year beginning in 2008 or 2009.

“(C) ELECTION.—Any election under this paragraph shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extension of time) for filing the taxpayer’s return for the taxable year of the loss from operations. Any such election, once made, shall be irrevocable.

“(D) COORDINATION WITH ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—In the case of a taxpayer who elects to have subparagraph (B)(ii) apply, section 56(d)(1)(A)(ii) shall be applied by substituting ‘ending during 2001 or 2002 or beginning during 2008 or 2009’ for ‘ending during 2001, 2002, 2008, or 2009’.”.

(d) ANTI-ABUSE RULES.—The Secretary of Treasury or the Secretary’s designee shall prescribe such rules as are necessary to prevent the abuse of the purposes of the amendments made by this section, including anti-stuffing rules, anti-churning rules (including rules relating to sale-leasebacks), and rules similar to the rules under section 1091 of the Internal Revenue Code of 1986 relating to losses from wash sales.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by

1 this section shall apply to net operating losses arising in taxable years ending after December 31, 2007.

4 (2) ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—The amendment made by subsection (b) shall apply to taxable years ending after 1997.

7 (3) LOSS FROM OPERATIONS OF LIFE INSURANCE COMPANIES.—The amendment made by subsection (d) shall apply to losses from operations arising in taxable years ending after December 31, 2007.

12 (4) TRANSITIONAL RULE.—In the case of a net operating loss (or, in the case of a life insurance company, a loss from operations) for a taxable year ending before the date of the enactment of this Act—

17 (A) any election made under section 172(b)(3) or 810(b)(3) of the Internal Revenue Code of 1986 with respect to such loss may (notwithstanding such section) be revoked before the applicable date,

22 (B) any election made under section 172(b)(1)(H) or 810(b)(4) of such Code with respect to such loss shall (notwithstanding such

1 section) be treated as timely made if made be-
 2 fore the applicable date, and

3 (C) any application under section 6411(a)
 4 of such Code with respect to such loss shall be
 5 treated as timely filed if filed before the appli-
 6 cable date.

7 For purposes of this paragraph, the term “applica-
 8 ble date” means the date which is 60 days after the
 9 date of the enactment of this Act.

10 (f) EXCEPTION FOR TARP RECIPIENTS.—The
 11 amendments made by this section shall not apply to—

12 (1) any taxpayer if—

13 (A) the Federal Government acquires, at
 14 any time, an equity interest in the taxpayer
 15 pursuant to the Emergency Economic Stabiliza-
 16 tion Act of 2008, or

17 (B) the Federal Government acquires, at
 18 any time, any warrant (or other right) to ac-
 19 quire any equity interest with respect to the
 20 taxpayer pursuant to such Act,

21 (2) the Federal National Mortgage Association
 22 and the Federal Home Loan Mortgage Corporation,
 23 and

24 (3) any taxpayer which at any time in 2008 or
 25 2009 is a member of the same affiliated group (as

1 defined in section 1504 of the Internal Revenue
2 Code of 1986, determined without regard to sub-
3 section (b) thereof) as a taxpayer described in para-
4 graph (1) or (2).

5 (g) TRANSFERS TO THE GENERAL FUND.—From
6 time to time, the Secretary of the Treasury shall transfer
7 to the general fund of the Treasury an amount equal to
8 the reduction in revenues to the Treasury resulting from
9 the amendments made by subsections (a) through (f). Not-
10 withstanding section 5 of the American Recovery and Re-
11 investment Act of 2009 (Public Law 111–5), such
12 amounts shall be transferred from the amounts appro-
13 priated or made available and remaining unobligated
14 under such Act.

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